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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44861
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR 2016-9689
v.)	
)	
BRIAN GREGORY FIORI,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

A jury found Brian Fiori guilty of driving under the influence of alcohol (*hereinafter* DUI), and Mr. Fiori admitted that his prior record qualified his conviction as a felony and that he was subject to the persistent violator enhancement. Mr. Fiori asserts that the district court abused its discretion by imposing an excessive sentence of twelve years, with five years fixed, in light of the mitigating factors present in his case.

Statement of the Facts & Course of Proceedings

Sheriff's deputies were called to a private road near Lake Coeur d'Alene where Brian Fiori's car was found stuck on an embankment. (R., pp.8-25.) Although no one saw how the car

became stuck, and no one saw Mr. Fiori drive the car, the deputies arrested and charged Mr. Fiori with DUI, based upon a witness's statement that he saw Mr. Fiori in the driver's seat, and Mr. Fiori failing field sobriety tests. *Id.* The State filed a criminal complaint alleging Mr. Fiori committed the crime of DUI and that he was subject to both a felony enhancement and the persistent violator enhancement due to his prior record. (R., pp.28-29.) A preliminary hearing was held, Mr. Fiori was bound over into the district court, and an information was filed charging him with DUI and alleging the same enhancements. (R., pp.37-45.)

At trial, Mr. Fiori's counsel acknowledged that the evidence was sufficient to show that Mr. Fiori was intoxicated on the day in question, but argued that the State failed to prove beyond a reasonable doubt that Mr. Fiori drove his car that day. (Tr. Trial, p.144, L.9 – p.152, L.10.) The jury, however, determined that the State had met its burden and found Mr. Fiori guilty of DUI. (R., p.127; Tr. Trial, p.157, Ls.7-10.) Mr. Fiori then admitted that he had a felony DUI conviction within the prior fifteen years, and that he had two prior felony convictions. (Tr. Trial, p.158, L.2 – p.159, L.21.)

At sentencing, the State asked the court to impose a unified sentence of twelve years, with five years fixed, without retaining jurisdiction; Mr. Fiori's counsel asked the court to retain jurisdiction, but did not recommend a specific underlying sentence; and, Mr. Fiori asked that he be allowed to participate in the Good Samaritan treatment program. (Tr. Sent., p.15, L.24 – p.21, L.20.) The district court agreed with the State's recommendation and executed a unified

sentence of twelve years, with five years fixed, declining to retain jurisdiction.¹ (R., pp.136-141; Tr. Sent., p.25, Ls.8-13.) Mr. Fiori filed a timely Notice of Appeal.² (R., pp.152-154.)

ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Fiori a unified sentence of twelve years, with five years fixed, in light of the mitigating factors that exist in this case?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Upon Mr. Fiori A Unified Sentence Of Twelve Years, With Five Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Fiori asserts that, given any view of the facts, his unified sentence of twelve years, with five years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Fiori does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Fiori must show that in light of the

¹ Mr. Fiori was on probation in two separate cases at the time of his conviction, and the district court revoked probation in those cases and ordered all of the sentences to be served concurrently. (Tr. Sent., p.26, L.25 – p.27, L.19.)

² Mr. Fiori filed a timely Rule 35 motion apparently based upon his belief that he received ineffective assistance of counsel. (R., pp.144-145, 170.) The district court denied the motion. (R., pp.171-172.) In light of the relevant standards of review, Mr. Fiori does not challenge the denial of his Rule 35 motion in this appeal.

governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Although Mr. Fiori maintains that he was not driving his car when it ended up on the embankment, he nevertheless recognizes that he made a poor choice by drinking alcohol that day. (PSI, pp.4-5.)³ Mr. Fiori began drinking alcohol when he was sixteen and much of his criminal history is a direct result of his addiction. (PSI, pp.8-9, 15-16.) Mr. Fiori recognizes that he is an alcoholic and needs treatment – he tried to get into the Good Samaritan program throughout the legal proceedings, including before his trial. (R., pp.49-50; Tr. Sent., p.21, Ls.10-20; PSI, pp.10, 15-17, 20, 33.)

Mr. Fiori also suffers from mental health issues. He has been diagnosed with bi-polar disorder, as well as attention deficit disorder, depression, and anxiety. (PSI, pp.14-15.) Mr. Fiori believed that he would benefit from mental health counselling and medications. *Id.* Fortunately for Mr. Fiori, he enjoys the support of family and friends. His father, Michael Fiori, wrote a letter in support providing the court insight into Mr. Fiori's childhood and adolescence and expressing support for him. (PSI, pp.47-51.) Additionally, Francisco Rietta, a Catholic Ecumenical Missionary from Chile, wrote a letter explaining that he is a friend of the Fiori

³ Citations to the Presentence Investigation Report and its attached documents will use the designation "PSI" and the page numbers associated with the electronic file containing those documents.

family and expressing his belief, informed by personal experience, that Mr. Fiori can beat his addiction through treatment. (PSI, p.52.)

Idaho Courts recognize that an alcohol addiction and mental health problems, coupled with the desire for treatment, in addition to support from family and friends, are all mitigating factors that should counsel a district court to impose a lesser sentence. *See State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593 (1982); *Hollon v. State*, 132 Idaho 573 (1999). Mr. Fiori asserts that, in light of the mitigating factors that are present in his case, his unified sentence of twelve years, with five years fixed, is excessive and represents an abuse of the district court's discretion.

CONCLUSION

Mr. Fiori respectfully requests that this Court vacate his sentence and remand his case to the district court with instructions that the court either retain jurisdiction, or place him on probation and allow him to participate in the Good Samaritan program, or to otherwise reduce his sentence as it deems appropriate.

DATED this 8th day of November, 2017.

_____/s/_____
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of November, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

BRIAN GREGORY FIORI
INMATE #110811
ICIO
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OROFINO ID 83544

SCOTT WAYMAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

R D WATSON
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCP/eas